

TENTATIVE RULINGS for CIVIL LAW and MOTION

June 25, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: **Chairez v. Minaberry**

Case No. CV PM 09-175

Hearing Date: **June 25, 2009** **Department Fifteen** **9:00 a.m.**

State Farm Mutual Automobile Insurance Company ("State Farm") demurs to the first amended complaint on the ground that there is a misjoinder of parties. State Farm contends that under the circumstances of this case, the plaintiff may not sue State Farm and its insured(s) in the same lawsuit. State Farm cites *Royal Globe Ins. Co. v. Superior Court of Butte County* (1979) 23 Cal.3d 880 in support of its demurrer.

Plaintiff's opposition brief fails to address the holding in *Royal Globe Ins. Co.* Additionally, neither State Farm nor the plaintiff discusses *Geraci v. United Services Automobile Assoc.* (1987) 188 Cal.App.3d 1245. It would be helpful to the Court to have the parties submit supplemental briefs discussing the above cases, the discussion at Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group) ¶ 2:228, and any other cases decided after *Royal Globe Ins. Co.* on the issue of misjoinder.

The hearing on State Farm's demurrer is continued to Wednesday, August 19, 2009, at 9:00 a.m. in Department Fifteen so that the parties may submit supplemental briefs. The parties shall file and serve supplemental opening briefs, not to exceed 10 pages in length, on the issue identified herein only, **by no later than July 9, 2009**. The parties shall file supplemental reply briefs, not to exceed 10 pages in length, **by no later than July 23, 2009**. All contentions must be supported by legal authority. The recitation of legal principles is unhelpful when not applied to the facts in this matter.

The motion to strike is **GRANTED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 436, subd. (a).) The first amended complaint fails to allege any facts showing oppression, fraud or malice. (Civ. Code, § 3294.) The Court shall set the deadline for the filing of a second amended complaint when it rules on State Farm's demurrer.

If no hearing is requested, the tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **The People of the State of California v. \$1,220.00 U.S. Currency**
Case No. CV PT 05-383

Hearing date: **June 25, 2009** **Department Fifteen** **9:00 a.m.**

Petitioner's unopposed motion for summary judgment is **DENIED WITHOUT PREJUDICE**. (Code Civ. Proc., § 437c, subd. (b)(1).) Petitioner did not file a declaration or request for judicial notice in support of the motion establishing the foundation for the evidence set forth in the separate statement of undisputed material facts. (Evid. Code, §§ 452, 453, & 455.)

Petitioner is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437, subdivision (g) and California Rules of Court, rule 3.1312.

TENTATIVE RULING

Case: **Hayden v. Shestowsky**
Case No. CV CV 08-3382

Hearing Date: **June 25, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff's motion for order appointing referee and for petition for instructions is **DENIED**. (Code Civ. Proc., §§ 639 & 873.101, et seq.)

Immediately on filing the complaint, the plaintiff must record a notice of pendency of action in the county where the property is located. If the plaintiff does not do so, the court on motion of any party or on its own motion, **must** order the party seeking partition to record the notice and must stay the action until the notice is recorded. (Code Civ. Proc., § 872.250.) There is no notice in the file that plaintiff recorded a notice of pendency of action with the county. Accordingly, the Court **ORDERS** Plaintiff to record a notice of pendency of action with the Yolo County Recorders Office and provide proof of the recordation with the Court. This action is **STAYED** pending proof of recordation.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Sellers v. Odell**
Case No. CV CV 09-197

Hearing Date: **June 25, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff Jay L. Seller's application for leave to file a second amended complaint is **GRANTED**. (Code Civ. Proc., § 473.)

Defendant Brian Odell's demurrer to the amended complaint is **MOOT**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, is required.

TENTATIVE RULING

Case: Tee v. Cache Creek Indian Bingo & Casino
Case No. CV CV 06-1386

Hearing Date: June 25, 2009 Department Fifteen 9:00 a.m.

Defendant Cache Creek Indian Bingo & Casino, an enterprise of Rumsey Indian Rancheria of Wintun Indians of California's motion for terminating sanctions, or in the alternative, issue, evidentiary, and monetary sanctions is **GRANTED** as follows:

Defendant's request for terminating sanctions is **DENIED WITHOUT PREJUDICE**.

Defendant's request for evidence sanctions is **GRANTED**. (Code Civ. Proc., §§ 2023.030, subd. (c) & 2031.300, subd. (c).) Plaintiff is precluded from presenting at the trial any of the documents requested in Defendant's request for production of documents.

Defendant's request for monetary sanctions against the Plaintiff is **GRANTED**. (Code Civ. Proc., §§ 2023.030, subd. (a) and 2031.300, subd. (c).) Catalina Tee shall pay to Cache Creek Indian Bingo & Casino \$1,575.00 in monetary sanctions.

Defendant shall serve Plaintiff's counsel with a copy of this order by facsimile and mail by June 26, 2009, and file a proof of service showing such service.